

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ARTURO G.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Case No. C19-1783-MLP

ORDER

I. INTRODUCTION

Plaintiff seeks review of the denial of his applications for Supplemental Security Income and Disability Insurance Benefits. Plaintiff contends the administrative law judge (“ALJ”) erred in assessing the medical opinions and in discounting his own subjective testimony. (Dkt. # 10 at 1.) As discussed below, the Court REVERSES the Commissioner’s final decision and REMANDS the matter for further administrative proceedings under sentence four of 42 U.S.C. § 405(g).

II. BACKGROUND

Plaintiff was born in 1968, has an 11th grade education and additional training in operating a forklift. AR at 296. He has worked in customer service and equipment maintenance; in a warehouse performing shipping, packing, and assembly work; performing truck

1 maintenance; as a delivery driver; and as a landscape laborer and in other temporary labor jobs.

2 *Id.* at 312. Plaintiff was last gainfully employed in December 2014. *Id.* at 296.

3 In July 2015, Plaintiff applied for benefits, alleging disability as of February 25, 2015.
4 AR at 259-71. Plaintiff's applications were denied initially and on reconsideration, and Plaintiff
5 requested a hearing. *Id.* at 142-45, 151-66. After the ALJ conducted hearings in March and
6 October 2017 (*id.* at 29-73), the ALJ issued a decision finding Plaintiff not disabled. *Id.* at 11-22.

7 Utilizing the five-step disability evaluation process,¹ the ALJ found:

8 Step one: Plaintiff has not engaged in substantial gainful activity since the alleged onset
9 date.

10 Step two: Plaintiff has the following severe impairments: moderate persistent depressive
11 disorder; moderate persistent asthma controlled with handheld inhaler; rotator cuff
impingement syndrome of the left shoulder; mild left cubital tunnel syndrome/ulnar
neuropathy; and knee pain, status post bilateral meniscus repair by history.

12 Step three: These impairments do not meet or equal the requirements of a listed
13 impairment.²

14 Residual Functional Capacity: Plaintiff can perform light work with additional
15 limitations: he can use both arms to lift/carry 20 pounds occasionally and 10 pounds
16 frequently. With his unassisted left arm, he can perform tasks that require him to lift and
17 carry no more than 2 pounds. He can perform tasks that require him to frequently push
18 and pull using both arms. He cannot climb ladders, ropes, or scaffolds. He can
19 occasionally climb ramps and stairs, stoop, crouch, crawl, and kneel. He can frequently
balance. He cannot reach overhead with his left arm, but can reach occasionally to the
front and to the side with that arm. He cannot have exposure to vibration, hazards such as
unprotected heights and large moving equipment, or inhaled irritants. He can understand,
remember, and apply information consistent with completing tasks that require a General
Education Development reasoning level of 2 or less. He can work in a routine setting
with few changes that affords the usual work breaks throughout the day.

20 Step four: Plaintiff can perform his past relevant work as a cashier II.

21 AR at 11-22.

22
23

¹ 20 C.F.R. §§ 404.1520, 416.920.

² 20 C.F.R. Part 404, Subpart P, Appendix 1.

1 As the Appeals Council denied Plaintiff's request for review, the ALJ's decision is the
 2 Commissioner's final decision. AR at 1-6. Plaintiff appealed the final decision of the
 3 Commissioner to this Court.

4 **III. LEGAL STANDARDS**

5 Under 42 U.S.C. § 405(g), this Court may set aside the Commissioner's denial of social
 6 security benefits when the ALJ's findings are based on legal error or not supported by substantial
 7 evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 (9th Cir. 2005). As a
 8 general principle, an ALJ's error may be deemed harmless where it is "inconsequential to the
 9 ultimate nondisability determination." *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012)
 10 (cited sources omitted). The Court looks to "the record as a whole to determine whether the error
 11 alters the outcome of the case." *Id.*

12 "Substantial evidence" is more than a scintilla, less than a preponderance, and is such
 13 relevant evidence as a reasonable mind might accept as adequate to support a conclusion.
 14 *Richardson v. Perales*, 402 U.S. 389, 401 (1971); *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th
 15 Cir. 1989). The ALJ is responsible for determining credibility, resolving conflicts in medical
 16 testimony, and resolving any other ambiguities that might exist. *Andrews v. Shalala*, 53 F.3d
 17 1035, 1039 (9th Cir. 1995). While the Court is required to examine the record as a whole, it may
 18 neither reweigh the evidence nor substitute its judgment for that of the Commissioner. *Thomas v.*
 19 *Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). When the evidence is susceptible to more than one
 20 rational interpretation, it is the Commissioner's conclusion that must be upheld. *Id.*

21 **IV. DISCUSSION**

22 **A. The ALJ Erred in Discounting Plaintiff's Subjective Testimony**

23 The ALJ found Plaintiff's subjective allegations to be inconsistent with the record, in an

1 incomplete sentence, but did not go on to identify any particular inconsistency, with the
2 exception of discussing conflicts between his allegations and the objective medical evidence
3 pertaining to his ability stand and walk, and use his left arm. AR at 16, 21. The majority of the
4 ALJ's findings that arguably pertain to her assessment of Plaintiff's allegations simply
5 summarize the medical record without explaining why that evidence undermines Plaintiff's
6 allegations. *Id.* at 16-19.

7 Plaintiff argues that the ALJ's summary of the medical evidence does not constitute the
8 clear and convincing reasons that must be provided, in the Ninth Circuit, in order to discount a
9 claimant's subjective allegations. *See Brown-Hunter v. Colvin*, 806 F.3d 487, 493-94 (9th Cir.
10 2015) (ALJ failed to provide specific reasons, allowing for meaningful review where "she simply
11 stated her non-credibility conclusion and then summarized the medical evidence supporting her
12 RFC determination"). The Court agrees that the majority of the ALJ's discussion of the medical
13 evidence does not explain why she discounted Plaintiff's allegations. The evidence summarized
14 could be interpreted in a way that would arguably undermine Plaintiff's allegations, but the
15 Court will not supply that rationale in the first instance.

16 Plaintiff does not address, however, the ALJ's explanation regarding his allegations of
17 difficulty standing/walking and using his left arm. The ALJ's findings in this regard read, in
18 relevant part:

19 [Plaintiff] reported that walking was his only exercise in 2016 and 2017. ([AR
20 790, 1066].) Exams, including the 2017 consultative exam, showed normal gait,
21 as well as normal motion and strength in the knees. He received no treatment for
his knee pain after 2015. The claimant's allegations that he is highly limited in his
ability to stand or walk are not consistent with these factors or the medical record.

22 . . .

23 The claimant's most well document impairment is his neck, shoulder, and upper
extremity pain, but the claimant's allegations of inability to use his left arm are
not fully consistent with the record. The claimant has avoided any treatment for

1 his neck pain aside from narcotics, which as documented in detail above were
2 well used. Aside from limited motion in his neck, which is consistent with the
3 MRI, he has clinical correlation for C7 radiculopathy. Further, even his shoulder
4 had only mild weakness in 2016, and full strength by 2017. Based on periods of
shoulder weakness, I find that for at least 12 months, the claimant had minimal
use of his left upper extremity. This finding likely underestimates his true level of
functioning for much of the period.

5 AR at 21. These findings identify some inconsistency between the medical record and Plaintiff's
6 allegations, but the ALJ ultimately (although reluctantly) credited Plaintiff's alleged limitations
7 in his left arm. Thus, the only inconsistency cited by the ALJ as a reason to *discount* Plaintiff's
8 allegations pertains to his standing/walking limitations.

9 In addressing Plaintiff's ability to stand/walk, the ALJ focused on the evidence of
10 Plaintiff's knee condition, without acknowledging that Plaintiff's treating physician indicated
11 that his standing/walking abilities were also limited by his spondylosis and stenosis. AR at 767-
12 69. Because the ALJ's assessment of Plaintiff's standing/walking limitations does not fully
13 address all of the medical evidence, the ALJ's incomplete reasoning does not constitute a clear
14 and convincing reason to discount Plaintiff's allegations. The ALJ should reconsider Plaintiff's
15 allegations on remand.

16 **B. The ALJ Erred in Assessing Medical Opinion Evidence**

17 Plaintiff challenges the ALJ's assessment of opinions written by treating physician Kami
18 Harless, M.D., and examining physician Jaclyn Russell, M.D. According to Plaintiff, the ALJ
19 erred in either discounting or failing to discuss opinions written by Drs. Harless and Russell.

20 *1. Legal Standards*

21 Where contradicted, a treating or examining doctor's opinion may not be rejected without
22 "specific and legitimate reasons' supported by substantial evidence in the record for so doing."
23

1 *Lester v. Chater*, 81 F.3d 821, 830-31 (9th Cir. 1996) (quoting *Murray v. Heckler*, 722 F.2d 499,
2 502 (9th Cir. 1983)).

3 2. *Dr. Harless*

4 In July 2015, Dr. Harless completed a DSHS form describing Plaintiff's physical
5 symptoms and limitations, and opined that his conditions limited him to performing sedentary
6 work. AR at 701-05. Dr. Harless indicated that her opinion was rendered pending further
7 evaluation from orthopedics/neurosurgery regarding whether to treat Plaintiff's conditions with a
8 steroid injection or surgery. *Id.* at 749. She provided a nearly identical opinion in May 2016. *Id.*
9 at 767-71.

10 The ALJ explained that she gave little weight to Dr. Harless's 2015 opinion because it
11 was inconsistent with Dr. Harless's treatment notes, "which showed only some loss of knee and
12 neck motion, but otherwise showed almost full strength and normal gait." AR at 20. The ALJ
13 also noted that Dr. Harless explicitly noted that her opinion was provided pending further
14 evaluation, but the ALJ noted that Plaintiff's further evaluations "did not show any greater
15 findings." *Id.* (citing *id.* at 731). The ALJ did not explicitly acknowledge the existence of Dr.
16 Harless's 2016 opinion, but did cite it when explaining that she gave little weight to the 2015
17 opinion. *Id.* at 20.

18 Plaintiff argues that the ALJ erred in failing to acknowledge that Dr. Harless's treatment
19 notes described more abnormalities than the ALJ described: Plaintiff points to notes where Dr.
20 Harless found reduced leg and shoulder strength as well, along with positive McMurray's, varus,
21 and valgus testing "demonstrating ongoing instability in Plaintiff's knees." (Dkt. # 10 at 5 (citing
22 AR at 521-22).) The Commissioner reiterates the ALJ's summary of the treatment notes, without
23

1 acknowledging the additional findings emphasized by Plaintiff or explaining why the ALJ did
2 not misrepresent the treatment notes in ignoring those abnormal findings. (Dkt. # 11 at 11.)

3 Furthermore, the ALJ cited one orthopedic exam that showed full range of motion in
4 Plaintiff's neck, but the ALJ did not acknowledge the abnormal findings contained in that exam
5 report, such as "profound weakness in C6 and C7 notably with resisted elbow extension and with
6 trying to give the thumbs up sign" and a positive Spurling sign. *See* AR at 731. Plaintiff also
7 points to other examinations showing a reduced cervical range of motion as well as findings of
8 weakness in Plaintiff's back and shoulder. (Dkt. # 10 at 6 (citing AR at 787, 1057-58).)

9 The Commissioner contends that Plaintiff has not shown that the ALJ's interpretation of
10 the evidence was unreasonable because "the record is replete with largely normal examinations
11 throughout the period at issue." (Dkt. # 11 at 13.) But the Commissioner cites many
12 examinations that are arguably not "largely normal." *See, e.g.*, AR at 370-71 (Plaintiff fitted with
13 knee immobilizer and crutches), 377 (finding radiculopathy in Plaintiff's left arm extending to
14 his fourth and fifth digits), 394 (treatment notes indicate that Plaintiff has "associated findings
15 suggestive of C8 radiculopathy), 409 (describing altered gait, limited knee range of motion), 420
16 (antalgic gait, medial joint line tenderness in the left knee), 731 (positive Spurling sign and
17 painful cervical range of motion, with "profound weakness in C6 and C7"), 863-64
18 (documenting limited range of motion due to pain in left shoulder/neck), 924 ("[m]ild restricted"
19 shoulder range of motion, and weak strength in arm muscle groups), 1044 (reduced neck range
20 of motion and decreased sensation in the left C7 dermatome). Furthermore, as discussed above,
21 even the orthopedic examination the ALJ cited contains abnormal findings that the ALJ failed to
22 mention in the decision, when finding that this examination failed to show any greater findings
23 than Dr. Harless's opinions. Because the ALJ's decision mischaracterizes the record when

1 finding Dr. Harless's opinions to be inconsistent with her own notes as well as other
2 examinations, the Court finds that the ALJ's reasoning is not legitimate.

3 On remand, the ALJ should reconsider Dr. Harless's 2015 and 2016 opinions and either
4 credit them, or provide legally sufficient reasons to discount them.

5 3. *Dr. Russell*

6 In May 2017, Dr. Russell examined Plaintiff and wrote a narrative report and completed a
7 form opinion describing his symptoms and limitations. AR at 1041-52. Dr. Russell diagnosed
8 Plaintiff with neck pain, knee pain, hypertension, fatigue, and depression. *Id.* at 1045. Dr. Russell
9 opined that Plaintiff was limited to standing/walking for four hours, "given the C7 radiculopathy
10 until this is further taken care of." *Id.* Dr. Russell also found that Plaintiff was limited to lifting
11 up to 10 pounds frequently, due to the possible radiculopathy. AR at 1045, 1047. The ALJ
12 explained that she gave "some weight" to Dr. Russell's opinion, but found no basis for Dr.
13 Russell's conclusion that Plaintiff was limited to standing/walking four hours per day, because
14 there is "no obvious link" between neck/arm pain and his ability to stand/walk, and because
15 radiculopathy has never been confirmed by testing or consistently observed. *Id.* at 20-21.

16 Plaintiff argues that the ALJ erred in relying on her lay interpretation of the medical
17 evidence to find that there was no link between Plaintiff's neck/arm pain and his ability to
18 stand/walk, given that Dr. Harless found that Plaintiff's neck/arm pain indeed limited his ability
19 to walk, and Dr. Russell reviewed Dr. Harless's opinion as part of her examination. AR at 768,
20 1041. But, even assuming the ALJ erred in discounting the restriction to four hours of
21 standing/walking, this error was harmless in light of the ALJ's alternative finding that Plaintiff
22 could perform the job of cashier II even with that restriction included. *See id.* at 22.
23

1 With respect to the lifting restrictions described by Dr. Russell, the ALJ rejected them as
2 based on a presumption that Plaintiff's radiculopathy did exist, when the objective evidence
3 showed otherwise. AR at 20-21. Plaintiff himself admits that the evidence does "not support a
4 conclusion that Plaintiff's limitations arose from radiculopathy[.]" (Dkt. # 10 at 8.) Thus,
5 because Dr. Russell's opinion was predicated on radiculopathy that was not confirmed by the
6 record, the ALJ did not err in discounting Dr. Russell's opinion in light of that inconsistent
7 evidence. *See Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008) (not improper to reject
8 an opinion presenting inconsistencies between the opinion and the medical record). The ALJ
9 will, however, have the opportunity to reconsider similar lifting restrictions (AR at 768-69) in
10 reconsidering Dr. Harless's opinions on remand.

11 V. CONCLUSION

12 For the foregoing reasons, the Commissioner's final decision is REVERSED and this
13 case is REMANDED for further administrative proceedings under sentence four of 42 U.S.C. §
14 405(g). On remand, the ALJ should reconsider Plaintiff's allegations as well as Dr. Harless's
15 2015 and 2016 opinions.

16 Dated this 30th day of June, 2020.



19 MICHELLE L. PETERSON
20 United States Magistrate Judge